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Summary record of the 240th meeting
Held at the Palais Wilson, Geneva, on Wednesday, 23 May 2018, at 10 a.m.

Chair: Ms. Janina

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The meeting was called to order at 10 a.m.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Honduras (*continued*) (CED/C/HND/1; CED/C/HND/Q/1 and CED/C/HND/Q/1/Add.1)

1. *At the invitation of the Chair, the delegation of Honduras took places at the Committee table.*

2. **The Chair**, inviting the Committee to continue its consideration of the initial report of Honduras (CED/C/HND/1), said that the focus would be on measures to prevent enforced disappearances.

3. **Ms. Galvis Patiño** (Country Rapporteur) said that, while the Committee was grateful for the information provided on domestic legislation relevant to the object of article 16 of the Convention, it would be useful to hear more about the criteria used to assess the risk of a person's being subjected to enforced disappearance following his or her expulsion, return, surrender or extradition to another State; the criteria used to determine the maximum duration for which a person could be held in administrative detention pending a decision on the implementation of any such measures; and the remedies available for appealing against decisions to implement such measures. The delegation might also indicate whether such appeals had suspensive effect.

4. The Committee had received reports that, despite the State party's assurances to the contrary, persons deprived of their liberty were not always informed of their right of access to a lawyer, a physician, a family member or any other person of their choice from the moment of deprivation of liberty. It was also her understanding that persons with a legitimate interest were not always granted access to detention records and that persons in police custody often did not receive a medical examination by an independent physician. Moreover, the Committee had been informed that persons detained following the 2017 national elections had been denied access to a lawyer and members of their family and that there had been delays in processing their applications for habeas corpus. She asked whether any formal complaints of failure to respect the rights referred to in article 17 of the Convention had been filed and, if so, what action had been taken and whether any penalties had been imposed. It would also be useful to learn more about the measures in place to ensure that, in practice, there was prompt communication with consular authorities in cases where the person deprived of liberty was a foreign national.

5. She would welcome the delegation's comments on reports that the State party's national mechanism for the prevention of torture did not enjoy unrestricted access to places of deprivation of liberty, particularly maximum security prisons. She asked what measures the State party had adopted or planned to adopt to give full effect to article 17 (2) (e) of the Convention.

6. Furthermore, the Committee had found that the provisions of article 321 of the implementing regulations of the National Prison System Act, which specified the details to be included in inmate registers in detention facilities, were not fully aligned with the provisions of article 17 (3) of the Convention; she asked when the State party intended to adapt its inmate registers accordingly. Although Honduran legislation provided for the remedy of habeas data, it appeared that, in practice, not all persons with a legitimate interest could have access to the information mentioned in article 18 of the Convention by that means. She asked how the State party guaranteed the right of any person with a legitimate interest to have access to the information contained in inmate registers.

7. Lastly, she would like to know the outcome of the review of the training programmes for judicial institutions and whether there were plans to introduce specific, stand-alone training programmes on the Convention and the prevention of enforced disappearance for police officers, prison staff and persons involved both in the search for disappeared persons and in the investigation and prosecution of cases of enforced disappearance. It would also be useful to know whether there were plans to adopt criteria for measuring the effectiveness of such training programmes as part of the review.

8. **Mr. Huhle** (Country Rapporteur), noting that the definition of "victim" set out in article 17 of the Code of Criminal Procedure was somewhat narrow, asked whether the State party had considered aligning it with the one contained in article 24 (1) of the Convention. While he understood that victims of enforced disappearance had to initiate criminal proceedings in order to be recognized as such and that the criminal courts alone were competent to grant that status, it would be useful to know whether victims of enforced disappearance could obtain compensation through non-judicial channels. The Committee would also be interested to know whether there were plans to establish the historical truth about the circumstances and causes of enforced disappearances in Honduras as a means of promoting the right of victims to know the truth. It would likewise appreciate an update on the status of the national reparations programme.

9. Noting that article 84 of the Civil Code stipulated that a missing person was to be presumed dead five years after he or she had last been heard from, he asked what action would be taken if, after five years had elapsed, the missing person in question was found alive. He also asked what legal effects were produced by the entry of a presumed death in the national civil registry and how it affected the search for the missing person in question. He asked whether the State party had considered taking legislative measures to introduce the concept of declaring a person "missing by reason of enforced disappearance" as an alternative to declaring his or her presumed death. Declaring a person "missing by reason of enforced disappearance" could serve to resolve a range of civil law issues while sparing victims' families the emotional distress associated with declaring the presumed death of a loved one.

10. He would welcome more details on the competence of the Violent Death Unit of Bajo Aguán, which had investigated the deaths of persons linked to agricultural conflicts and had conducted exhumations, some of which had resulted in judicial proceedings. He would like to know whether any of those deaths had been the result of enforced disappearance and whether the judicial proceedings initiated in that connection related to that specific crime.

11. He would also be grateful if the delegation could provide an overview of the search mechanisms in place for persons believed to still be alive and of the measures taken by the State party to ensure that persons suspected of having committed an offence of enforced disappearance were not in a position to influence the progress of an investigation. He asked how the State party guaranteed family members' right to participate in the search for their missing loved ones, what dialogue mechanisms were available to victims of enforced disappearance in their search for truth, justice and reparation, and whether associations that performed that function needed to have legal personality. It would also be helpful to learn more about the scope and impact of the Act on the Protection of Human Rights Defenders, Journalists, Social Communicators and Justice Officials, including whether it covered persons assisting victims of enforced disappearance, and about the State party's efforts to involve victims of enforced disappearance in devising protective measures as a means of preventing revictimization.

12. The Committee would also like to receive statistical data on children reported missing in Honduras or in neighbouring transit countries and to know how many of those children were potential victims of enforced disappearance or human trafficking. He asked whether the State party was aware of any cases concerning adoptions that had originated in enforced disappearance and, if so, what measures it had taken to deal with them under civil and criminal law. He would be grateful if the delegation could confirm whether the bill on adoption submitted to the National Congress in late 2016 had been passed and, if applicable, describe its impact. It would also be useful to hear more about the impact of the "AMBER Alert" system for tracing and protecting missing or abducted children and adolescents, and the work of the national coordinating committee responsible for its implementation.

13. **Mr. Ravenna** said that the State party's practice of declaring the presumed death of missing persons after only five years was arguably at variance with its stated position that enforced disappearance should be dealt with as a continuous offence. The State party should give serious thought to introducing the concept of declaring a person "missing by reason of enforced disappearance" instead of declaring his or her presumed death, to help

resolve civil law issues such as inheritance and to avoid the potentially negative impact that a declaration of presumed death could have on efforts to search for missing persons.

The meeting was suspended at 10.25 a.m. and resumed at 10.50 a.m.

14. **Mr. Rizzo Alvarado** (Honduras) said that the Directorate General for the Protection of Honduran Migrants handled cases of missing migrants, the majority of whom had been found by the Honduran consular authorities in migrant detention centres, hospitals or morgues. There were, however, some 440 migrants who had not yet been located. The consular authorities had set up a search mechanism in an effort to establish the whereabouts of those migrants. Reports of missing migrants could be transmitted to the Directorate General directly by either family members or a State institution. The Directorate General then referred the case to Honduran migrant protection centres within 24 hours. Those centres then referred the case to the consular authorities, who checked the missing migrant's name against databases of returned Honduran migrants and Hondurans who had availed themselves of consular services and against the database of persons having obtained electronic travel documents to enter the United States of America, in addition to those maintained by the United States Border Patrol. Searches were also conducted in the desert, migrant holding centres, prisons and hospitals, in the hope of finding missing migrants alive. Family members could contact the consular authorities to report a relative missing and could follow up on a case by telephoning a country-specific hotline or accessing the relevant website. To date, 46 missing migrants had been found alive. The delegation could submit additional information on the search mechanism to the Committee in due course.

15. **Ms. Cueva** (Honduras) said that the principle of non-refoulement was enshrined in the Migration and Aliens Act and its implementing regulations. With a view to assessing the risks involved in deportation cases, the authorities interviewed foreign nationals to obtain basic information, such as their name, nationality, civil status, the names of their parents and spouse, and the motive for leaving their country of origin and for transiting Honduras. They were then informed about the relevant procedures. The authorities were required by the Act to provide legal assistance, to guarantee due process and, if necessary, to provide psychological and medical care. They also contacted the embassy or consulate of the person's country of origin. An appeal could be filed against any decision regarding deportation and the person concerned could not be deported until a final decision was handed down.

16. The National Committee for the Prevention of Torture and Cruel, Inhuman or Degrading Treatment had issued a report on its monitoring and capacity-building activities and on the processing of complaints and the issuance of recommendations. In recent years more than 400 visits, most of them unannounced, had been conducted to prisons, police stations, juvenile detention facilities and psychiatric hospitals. At the request of the Ministry of Human Rights, Justice, Governance and Decentralization, the National Committee had recently made further monitoring visits, inter alia to maximum-security prisons, and had issued its findings and recommendations.

17. Human rights defenders who faced risks or were subjected to harassment had access to an emergency hotline. Under article 5 of the implementing regulations of the Act on the Protection of Human Rights Defenders, Journalists, Media Professionals and Justice Officials, recognition of the legal personality of an organization or individual was not a prerequisite for participation in the National Protection Council. Persons who believed that they were at risk could actively participate in the risk assessment process and in the deliberations of the Technical Committee of the Protection Mechanism, which was composed of representatives of the Ministry of Security, the Public Prosecution Service, the Ministry of Human Rights and the Office of the Special Prosecutor for Human Rights. Representatives of the Office of the National Commissioner for Human Rights and of the Office of the United Nations High Commissioner for Human Rights in Honduras (OHCHR-Honduras) also attended those meetings. Protection was currently provided for 211 persons, 3 of whom worked as human rights defenders for victims of enforced disappearance.

18. **Ms. Alvarado** (Honduras) said that since the establishment of the Violent Death Unit in February 2014 there had been a marked decrease in the number of deaths in Bajo Aguán. Approximately 121 deaths had occurred, but none had been attributable to enforced

disappearance. The Public Prosecution Service had provided mobile morgues in Tocoa to support the on-site work of public prosecutors. There had been 55 exhumations in the Bajo Aguán area in 2014 and 2015, 5 in 2016 and 21 in 2017. Legal proceedings had been instituted in 34 cases and there had been 12 convictions and 3 acquittals. There were also 95 pending arrest warrants.

19. If missing persons who had been presumed to have died eventually reappeared alive, the cause of their disappearance continued to be investigated, inter alia to determine whether the case involved enforced disappearance, abduction, torture, unlawful detention or some other crime. As there was no statute of limitations for the crime of enforced disappearance, investigations and prosecutions continued even if the victim was never found and a declaration of presumed death was issued.

20. The amnesties declared in the 1990s had been found by the Supreme Court of Justice to be inapplicable to cases of human rights violations. The Constitutional Chamber of the Court had also ruled that Amnesty Decree No. 2-2010, which had been issued after the coup d'état, was not applicable to human rights violations.

21. **Mr. Chinchilla** (Honduras) said that all inmate registers complied with international standards. They contained, inter alia, the inmate's identification number, name, sex, nationality, address, occupation, civil status, place of origin, residence, employment status, telephone numbers, and health status. They also contained the inmate's signature and fingerprint and information on the grounds for detention, confiscated personal possessions, the detaining authorities, and the date, time and place of detention.

22. **Ms. Villanueva** (Honduras) said that a major process of identification of all persons deprived of their liberty would be launched in June 2018. An information technology tool would be used to gather personal information, fingerprints, dental records and genetic profiles. The procedure would comply with the provisions of a new law on human identification and genetic data banks that would shortly enter into force.

23. The "AMBER Alert" Act had been promulgated in December 2016 with a view to tracing and protecting child victims of abduction or disappearance and would enter into force in September 2018. The Act, which had been drawn up by the Directorate for Children, Adolescents and the Family, would be disseminated through the media and implemented throughout the country. A register of cases involving child victims would be established. There was no record to date of child victims of enforced disappearance in Honduras.

24. **Ms. Bardales** (Honduras), replying to a question about capacity-building in the area of prevention and investigation of enforced disappearances, said that there had been no such training in the Ministry of Defence or the Ministry of Security prior to 2017. However, arrangements had been made for training by national experts, including a former ombudsman, during the second half of 2018.

25. **Mr. Mejía Tinoco** (Honduras) said that criminal courts were responsible for determining which persons should be recognized as victims in cases of enforced disappearance; convictions in such cases entailed civil reparations for victims. Under an amicable settlement procedure, compensation had been provided to parents, children and others who were directly affected by such crimes. The level of compensation was ascertained through an analysis of the degree of harm suffered. The country's legislation did not specifically establish who had the status of a victim in cases of enforced disappearance. However, the Constitution stipulated that any ratified treaty formed part of domestic legislation.

26. **Mr. Lara Watson** (Honduras) said that the draft legislation under consideration included a bill on adoption, a bill on a national registry of missing or disappeared persons and a bill on full reparation for victims of human rights violations due to State acts or omissions. The authorities were well aware of the importance of enacting legislation based on the Committee's recommendations and of ensuring that it was implemented by the competent national bodies.

27. Under the bill on adoption, any adoption that failed to comply with article 141 of the Family Code or that was based on coercion or illicit aims was null and void. There was a

programme that provided for an inter-institutional response to any disappearances of children that occurred as a result of illegal adoptions.

28. **Ms. Galvis Patiño** said that she would appreciate clarification of the criteria used in the State party to evaluate the risk of a person's being subjected to enforced disappearance in the event of expulsion, refoulement, return, surrender or extradition.

29. While it was encouraging that, in 2014 and 2015, the National Committee for the Prevention of Torture and Cruel, Inhuman or Degrading Treatment had conducted more than 400 visits to places of detention, she was concerned at reports that, in practice, the Committee's access to certain prisons and ability to interview enforcement judges and Public Prosecution Service officials had been limited. The problem appeared to be particularly acute in detention facilities controlled by the armed forces. With that in mind, she asked how long the facilities in question would remain under military control.

30. Lastly, she had heard no reply to her question on the steps taken to ensure the effectiveness of training for public officials in the area of enforced disappearance.

31. **Mr. Huhle** said that, during the interactive dialogue, the delegation had referred to provisions on the definition of "victim" and on victims' right to reparation that appeared to be broader and more protective than those mentioned in either the initial report or the replies to the list of issues. It would be helpful to receive written confirmation of the contents of those provisions in due course.

32. Noting with satisfaction the cooperation between the Government and OHCHR-Honduras, he asked whether the State party was committed to keeping the Office open and what the Office's future priorities would be, aside from the protection of human rights defenders and victims of enforced disappearance.

33. According to paragraph 73 of the replies to the list of issues, the Violent Death Unit of Bajo Aguán had investigated the deaths of 118 persons and had carried out 57 exhumations, 26 of which had resulted in judicial proceedings. What were the suspected offences to which those investigations related?

34. He would welcome a response from the delegation to reports that missing Honduran children had been put up for adoption in Mexico. One such report dated back to the 1980s and related to the Villalta family. Was the Government aware of the alleged cases and, if so, what was being done to clarify the circumstances surrounding them?

35. He would be grateful for examples of instances in which international provisions on the definition of a victim of enforced disappearance had been applied in the State party, bearing in mind that existing domestic legislation did not contain a definition in line with article 24 of the Convention, which established that "victim" meant any individual who had suffered harm as the direct result of an enforced disappearance. He also wished to know whether the FTA cards described in paragraph 152 of the initial report were used only for migrants or for all missing persons, regardless of their status.

The meeting was suspended at 11.45 a.m. and resumed at 11.55 a.m.

36. **Ms. Cueva** (Honduras) said that the principle of non-refoulement was reflected in articles 42 and 45 of the Migration and Aliens Act and that the Government worked closely with the Office of the United Nations High Commissioner for Refugees to guarantee compliance with the Convention relating to the Status of Refugees in evaluations of the risk of enforced disappearance.

37. All prison facilities were administered by the National Prison Institute, a civilian body. Over the previous four years, significant efforts had been made with regard to the training of prison officials and, in 2016, the National Penitentiary Academy had been created. Allegations that independent monitoring mechanisms did not have free access to places of detention should be reported through official channels to the relevant authorities, namely the Office of the National Commissioner for Human Rights and the Office of the Special Prosecutor for Human Rights. The Government had not been made aware of any access issues faced by the National Committee for the Prevention of Torture and Cruel, Inhuman or Degrading Treatment.

38. OHCHR-Honduras had been opened pursuant to a request made by the Government in 2014, and it was currently operating under a 10-year agreement. The Office's priorities included developing and supporting the national mechanism for the protection of human rights defenders, providing technical assistance to facilitate the establishment of the Recommendation Monitoring System of Honduras, strengthening the National Protection Council and cooperating with civil society organizations.

39. **Ms. Alvarado** (Honduras) said that the criminal investigations conducted in Bajo Aguán had been launched in relation to suspected murders. None of the cases in question were thought to have involved enforced disappearance.

40. **Ms. Villanueva** (Honduras) said that measures were being taken to strengthen the protection of the rights of children and adolescents, in particular through the Directorate for Children, Adolescents and the Family. It was not known what had happened to the Villalta family in the 1980s, but a full investigation would be carried out. FTA cards could be used to preserve the genetic information of any person for any purpose.

41. **Mr. Lara Watson** (Honduras) said that, although existing domestic legislation contained a definition of "victim", it did not define the term in the specific context of enforced disappearance. International provisions on victims' right to reparation were applied in the consideration of petitions filed before the Inter-American Commission on Human Rights, and the jurisprudence of the Commission and the Inter-American Court of Human Rights was taken into account in Honduras.

42. **Ms. Cueva** (Honduras) said that one example of action that had been taken as a form of reparation was the donation, by the Government, of funds to an association acting on behalf of six students who had been kidnapped and detained in 1982. The association had used the money to purchase the building in which the students had allegedly been held and planned to convert it into a museum of historical truth.

43. **Ms. Galvis Patiño**, thanking the delegation for its frank replies, said that the Committee would appreciate receiving a copy of the new Criminal Code and updates on any developments of relevance to the Convention as part of its ongoing dialogue with the State party.

44. **Ms. Cueva** (Honduras) said that, while important steps had been taken to implement the Convention in Honduras, many challenges undoubtedly remained. The Committee's concluding observations would help to guide the Government's actions and would be added to the Recommendation Monitoring System of Honduras.

45. **The Chair** said that she wished to thank civil society organizations for their contribution to the Committee's work. Given the important role that such organizations played in combating enforced disappearance and protecting victims' rights, she hoped that they would continue to be able to cooperate freely with the Committee, without threat or intimidation.

The meeting rose at 12.10 p.m.